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Docket No. 4396-4002US1**REMARKS**

Claims 1-13 are pending in the present application. Claims 1 and 8 have been amended. No new matter has been added by these amendments.

The Examiner rejected claims 1, 4, 5, 10 and 11 under 35 U.S.C. §103(a) as being unpatentable over Novo (USP 4,685,373) in view of Stavash (USP 5,309,806). The Examiner similarly rejected claims 2, 6, 9 and 12 under 35 U.S.C. §103(a) as being unpatentable over Novo (USP 4,685,373) in view of Stavash (USP 5,309,806). Claims 7 and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Novo (USP 4,685,373) in view of Young (USP 3,685,388). Although the Examiner indicated in the Office Action Summary that claims 1-13 were rejected, the Office Action only include rejections directed to claims 1, 2, 4-7 and 9-13. The Office Action did not include any rejections for claims 3 and 8.

**§103(a) Rejection Of Claims 1, 4, 5, 10 and 11**

In Paragraph No. 2 of the Office Action, the Examiner stated that claims 1, 4, 5, 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Novo (USP 4,685,373) in view of Stavash (USP 5,309,806). Applicant notes, however, that the Examiner's rejection of claims 1, 4, 5, 10 and 11 only makes reference to the disclosure in Novo.

It is Applicant's understanding that the Examiner asserts that Novo discloses a wind instrument having a head section (26), intermediate section (16) and main section (27) as shown in cross-section in Figure 8. Applicant respectfully submits that Novo does not disclose a wind instrument as identified by the Examiner. Rather, Novo discloses a wind instrument having (1) "a head portion 16" extending from a proximal end 26 to a distal end 27" and having a mouth piece 30 and associated blow hole 32 as shown in cross-section in Figure 8, (2) "a main body portion 12" having a plurality of tone holes and (3) "a foot portion 14". In order to clarify

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the structure of the "main section" of the wind instrument of the invention recited in the pending claims, Applicant has amended independent claims 1 and 8 to specify that the main section includes "a plurality of toneholes communicating with the main section bore." Applicant has also amended independent claims 1 and 8 to clarify the configuration of the intermediate section as "having a gradually increasing diameter extending from the proximal end to the distal end."

Applicant respectfully traverses the Examiner's rejection and submits that Novo does not anticipate or render obvious the invention as recited in amended claims 1, 4, 5, 10 and 11. Specifically, Novo does not disclose, teach or suggest a wind instrument having an intermediate section having a gradually increasing bore diameter extending from a first diameter at its proximal end substantially equal to the head section bore diameter at the distal end of the head section and a second diameter at its distal end substantially equal to the main section bore diameter at the proximal end of the main section. Accordingly, Applicant respectfully submits that claims 1, 4, 5, 10 and 11 are patentably distinguished over Novo and are in condition for allowance.

**§103(a) Rejection Of Claims 2, 6, 9 and 12**

In Paragraph No. 3 of the Office Action, the Examiner stated that claims 2, 6, 9 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Novo (USP 4,685,373) in view of Stavash (USP 5,309,806). The Examiner noted that Novo did not disclose an intermediate section having a conical bore, but asserted that Stavash did so as Col. 1, lns. 60-65. The Examiner concluded that it would have been obvious to modify the flute disclosed in Novo with a conical bore section as disclosed in Stavash to provide a musical instrument with good intonation. Applicant respectfully traverses this rejection and submits that the asserted

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combination of Novo and Stavash in no way renders claims 2, 6, 9 and 12 unpatentable for the following reasons.

First, neither Novo or Stavash includes any motivation for making the Examiner's proposed combination. Novo expressly states that his invention is directed to forming the musical instrument with a substantially transparent or translucent material capable of transmitting light along its length. In this regard, Novo illustrates his invention with a conventional flute having a head portion 16, a main body portion 12 and a foot portion 14. Novo does not contain any disclosure, teaching or suggestion which would provide motivation to one of ordinary skill in the art to modify the general configuration of the wind instrument. Stavash expressly states that his invention is directed to improvements in fipple flutes and in particular to the bore and tone hole of the Flutophone<sup>®</sup> fipple flute. Stavash does not contain any disclosure, teaching or suggestion which would provide motivation to one of ordinary skill in the art to modify the conventional flute disclosed in Novo with the conical portion of the main body section of Stavash.

Second, even if there did exist the required motivation to combine Novo with Stavash as suggested by the Examiner, the Examiner's proposed combination of Novo and Stavash would not result in the invention of claims 2, 6, 9 and 12 of the present invention. The wind instrument recited in the pending claims 2, 6, 9 and 12 comprises a conical intermediate section or intermediate section bore having a gradually increasing diameter extending from the proximal end coupled to the head section to the distal end coupled to the main section having a plurality of toneholes. In contrast, Stavash discloses a fipple flute having (1) a head section 11 and (2) a main section 20 having a proximal end with a bore diameter equal to the head section bore diameter and a distal end having a reduced diameter conical extension. Neither Novo or

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Stavash disclose a conical intermediate section having a gradually increasing diameter from the proximal end to the distal end. Therefore, even if these references were combined as suggested by the Examiner, the resulting instrument would have a conical intermediate section with a gradually reduced diameter extending from its proximal end to its distal end. In addition, the "conical section" in Stavash identified by the Examiner is in the distal portion of the main section of the instrument and gradually decreases in diameter from its proximal end to its distal end. Accordingly, it would be improper to replace either the distal end of the head section or the proximal end of the main body section of Novo with the distal end of the main section of Stavash.

**§103(a) Rejection Of Claims 7 and 13**

The Examiner rejected claims 7 and 13 under 35 U.S.C. §103(a) as being unpatentable over Novo in view of Young. The Examiner asserted that while Novo does not disclose a wind instrument having a main section bore diameter of about 19 mm, Young discloses a range of bore diameters from which one of ordinary skill in the art could arrive at the 19 mm dimension recited in claims 7 and 13. Applicant respectfully traverses this rejection. Applicant notes that claims 7 and 13 depend from claims 1 and 8, respectively. Accordingly, Applicant respectfully submits that claims 7 and 13 are patentably distinguished over the Novo and Young references for the same reasons provided above with regard to the Examiner's rejections of claims 1, 4, 5, 10 and 11.

**CONCLUSION**

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims and allowance of this application.

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**AUTHORIZATION**

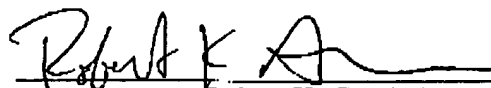
The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **13-4500**, Order No. **4396-4002US1**. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **13-4500**, Order No. **4396-4002US1**. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: June 26, 2006

By:



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